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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 92 of 2005

Petitioner — Vinod Sharma, S/o J.P. Sharma, aged .... years, Lab. Technician, Distt. Hospital, Ambikapur (M.P.)

Versus

Respondents

1. State of Madhya Pradesh, Thro
Medical Service, Satpuda Bhav
2. Joint Director of Health Services, Bilaspur Division, Bilaspur (M.P.)
3. Shri Bhimsen Mishra, Bio-Chemist, through Chief Medical Officer, District Hospital, Ambikapur, Distt. Surguja (M.P.)
4. State of Chhattisgarh Through-The Secretary, Health Services, D.K.S. Bhawan, Raipur.
5. Directorate of Health Services, State of Chhattisgarh Raipur

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Present: Mr. V.K. Pandey, Advocate for the petitioner.
Mr. Sushil Dubey, Government Advocate for State/respondents No. 2, 4 and 5.
None appears for respondent No. 3.

ORDER

(Passed on 21st Day of March, 2007)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. By this petition, the petitioner seeks promotion to the post of Assistant Malaria Officer or Bio-Chemist in the Blood Bank with other consequential benefits including fixation of pension, on the basis of consequential benefits with effect from the date when his juniors were promoted.

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2. Joint Director of Health
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Officer, District Hos
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4. State of Chhattisga
The Secretary, Hea
D.K.S. Bhawan, Raip

5. Directorate of He
State of Chhattis
Raipur

n'ble Mr. Justice Satish K. Agnih

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ey, Advocate for the petitioner.
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2. The indisputable facts as stated in the additional return filed by the State/respondent No. 1 is that the petitioner was appointed as Lab Technician on 4.5.1959. By mistake the respondent No. 3 Shri Bhimsen Mishra was shown in the gradation list as serial No. 9 recording his date of birth as 1942. The person whose date of birth was 1942 was not respondent No. 3 but one other person Shri Vinod Kumar Sharma. The date of the birth of the petitioner is 2nd July, 1935 and accordingly he retired with effect from 31.7.1993 on attaining the age of superannuation.

3. The respondent No. 3 was admittedly appointed as Lab Assistant on 2.9.1963 and was promoted on the post of Lab Technician on 16.9.1972, when the petitioner was directly appointed as Lab Technician on 4.5.1959. The respondent No. 3 was further promoted to the post of Bio-Chemist ignoring the petitioner despite the fact that the petitioner was 13 years senior to the respondent No. 3. The State/respondents in its additional return has further stated that the petitioner can be promoted on the post of Bio-chemist.

4. Learned counsel appearing for the petitioner submits that the Rule 14 of the Madhya Pradesh Public Health and Family Welfare Department Non-Ministerial (related to the Directorate of Health Services) Class-III Service Recruitment Rules, 1989 provides for conditions of eligibility for promotion. Second proviso to Rule 14 clearly provides that no junior person shall be considered for promotion in preference to the person senior to him only on the basis of his completing the service under this sub-rule 1. The mode of promotion is seniority as admitted by the respondents/State.

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5. In view of the admitted facts that the petitioner was 13 years senior to respondent No. 3, who has been promoted on 12.7.1988 to the post of Bio-Chemist. The petitioner is entitled to be at least promoted with effect from 12.7.1988. Learned counsel appearing for the petitioner does not press for his promotion prior to that date since the petitioner has already retired. The petitioner is entitled to consideration for promotion on the post of Bio-Chemist and consequential benefits flowing from this order including fixation of pension and pay accordingly.

6. As a result, this petition is allowed to the above extent. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Subhash